31st July, 1968, notice of appeal was filed on 21st August, 1968 (namely, within one month as required by rule 13), but no copy of the notice of appeal was served at all on the respondent, whether within or after one month, and it was for that reason that the court there struck out the appellant's appeal.

Ali F.J. concurred.

Preliminary objection dismissed.

Solicitors: *Devadas & Co.; Allen, Gledhill & Ball.*

YONG CHIANG v. BONG TJHIN OI

[F.C. (Azmi L.P., Suffian and Ong Hock Sim F.JJ.) August 10, 1973]

[Johore Bahru — Federal Court Civil Appeal No. 120 of 1972]

Landlord and Tenant — Action for recovery of possession — Whether premises controlled premises — Whether shophouse completed before or after January 31, 1948 — House built on old foundations — Whether new building — Control of Rent Act, 1966, s. 4(2)(a).

In this case the respondent claimed recovery of a shophouse let to the appellant. The shophouse had been rebuilt in 1950 on the site of the former shophouse which had been burnt and destroyed during the last war. In building the shophouse almost the whole of the old foundation of the former building, its side walls and rear wall up to a certain height were retained, but the rest of the building was entirely new. The major issue in the case was whether the shophouse was a building completed before or after January 31, 1948 and therefore whether it was controlled premises or not. The learned trial judge held that it was a building completed after January 31, 1948 and therefore not controlled premises [1973] 1 M.L.J. 59). The appellant appealed.

Held: in view of the extensive nature of the work done on the building, an altogether different building had arisen from the ashes of the old, even though the building was built on the same foundations and had the same ground floor. The premises were therefore not controlled premises and the appeal must be dismissed.

Cases referred to:

(1) *Mohamed bin Myddin* v. *Teo Mek Yoh* [1966] 2 M.L.J. 284.
(2) *Leong Yoong* v. *Lee Sem Yoong* [1968] 2 M.L.J. 72.
(3) *A. V. Vandayar & others* v. *Sivagami Achi & Anor.* A.I.R. 1949 P.C. 319.
(4) *Government of State of Penang and another* v. *B. H. Oon & Ors.* [1971] 2 M.L.J. 235.
(5) *Kai Nam* v. *Ma Kam Chan* [1956] A.C. 358.
(6) *Eastern Realty Co. Ltd.* v. *Chan Hua Seng* [1967] 2 M.L.J. 195.
(7) *Success Enterprises Ltd.* v. *Eng Ah Boon* [1968] 1 M.L.J. 75.
(8) *Shanon* v. *McMahon* [1945] I.R. 332.
(9) *Pritam Kaur* v. *Rajaratnam & Anor.* [1970] 2 M.L.J. 109.
(10) *Tioh Kooi Lan* v. *Ismailjee* [1972] 1 M.L.J. 64.

FEDERAL COURT.

R. R. Chelliah for the appellant.
J. L. Chua for the respondent.

Suffian F.J.: The dispute here concerns the nature of shophouse No. 50, Jalan Abdullah, Muar, of which the plaintiff (respondent before us) is owner and the defendant firm (appellant) tenant. The landlord purported to determine the tenancy on 31st August, 1968, by a notice to quit dated 17th July, 1968, and served on the defendant the same day. The tenant refused to vacate, whereupon the landlord sued to recover possession.

The major defence pleaded was that the shophouse is governed by the Control of Rent Act, 1966, because (it was said) it was completed on or before 31st January, 1948, and the work done on it after that date consisted only of repairs and renovations, so that no order or judgment for the recovery of possession may be made except in any of the cases specified in sections 16 and 18 of the Act.

Thus the major issue here is — is the shophouse a building "completed after the 31st day of January, 1948" within the meaning of section 4(2)(a) of the Control of Rent Act, 1966? If it is, it is not controlled premises and not subject to that Act; if it is not, it is controlled premises and so subject.

The landlord contends that it is. The tenant contends that it is not.

The learned trial judge agreed with the landlord and the tenant has appealed to us.

The first point taken before us relates to the onus of proving that the shophouse is a building completed after the prescribed date. At the trial there was no argument on this point, as counsel for the tenant conceded that the onus was on the tenant.

If I had to decide this point on general principles, I would say that it is for the tenant to prove that the shophouse is subject to the Act, because the general rule is that a landlord is free to impose any condition as to rent, security of tenure, etc., he pleases on his property, and if the tenant seeks protection against a notice to quit given by the landlord, it is for him to prove that he (the tenant) is protected by any special terms in the lease or by any special legislation. But the position is that the general principle has been expressly altered by statute, namely, section 4 of the Act, the relevant parts of which provide —

"(1) Except for the premises mentioned in subsection (2) all premises shall be subject to the operation of the provisions of this Act and any such premises shall for the purposes of this Act be called 'controlled premises'.

(2) The following premises shall be free from the operation of any of the provisions of this Act, namely —

(a) buildings completed after the 31st day of January, 1948;
...."

It will be observed that the general scheme of the section provides that *all* premises are controlled premises and therefore subject to the Act — except premises of the kind mentioned in subsection (2) of the section. The plaintiff landlord did not deny that the shophouse constituted premises but maintained that it was a building completed after 31st January, 1948, within the meaning of paragraph (a) of subsection (2). If no evidence at all had been given on either side, the plaintiff's claim would have failed and I am therefore of the opinion that by virtue of section 102 of the Evidence Act, 1950, as exemplified by illustration (b), the burden of proving that the shophouse was completed after 31st January, 1948, was on the plaintiff-landlord. This is inconsistent with the decision of this court in *Mohamed bin Myddin* v. *Teo Mek Yok*,[1] but consistent with a later decision of this court in *Leong Yoong* v. *Lee Sem Yoong*,[2] following a decision of the Privy Council in *A. V. Vandayar & Others* v. *Sivagami Achi and Another*.[3] I am of the opinion that *Mohamed bin Myddin*[1] had been decided per

incuriam, for the attention of the members of the court then sitting had not been drawn to that Privy Council decision.

Having disposed of the question of onus in that case, their Lordships of the Privy Council, however, added that the question was —

"... not of paramount importance since the whole of the evidence was on record."

In a more recent case decided by the Privy Council, *Government of State of Penang and Another* v. *B. H. Oon and Others*,[4] an appeal from this court, Lord Cross said something to the same effect. He said at page 237 —

"That question [of onus] would be relevant in a case where there was no evidence... or where the evidence was so evenly balanced that there is no pre-ponderance of probability."

In the case out of which the instant appeal arises on the other hand there was evidence bearing on the question whether the shophouse was completed before or after 31st January, 1948, and so with respect to Mr. Chelliah, counsel for the tenant-appellant, I do not think that the question of onus is important.

The evidence in this case disclosed the following facts.

It is not disputed that the original shophouse was in existence during the last war, in other words that it was originally a building completed well before 31st January, 1948. During the war like some other shops in Muar it was looted and burnt. The adjoining shophouse was also looted and burnt. There was no clear evidence whether or not after that No. 50 was occupied. But there was evidence which is not disputed that a certificate of fitness was issued by the Muar Town Council in respect of it a week before 1st June, 1950 — from which it may be reasonably inferred that after the arson there was nobody occupying No. 50 until then.

This is confirmed by the evidence of Mr. Chin San Tow, the only witness called by the plaintiff, who said that when he first moved to No. 44 Jalan Abdullah a few doors away shophouse No. 50 was an empty house, that no one was staying there, that the ground floor was an empty space with grass growing on it, and that some piling work was done on the place late in 1949 or early in 1950.

The fact that No. 50 was unoccupied as a result of the looting and burning is further confirmed by Mr. Khein Seng Chye, a witness called by the tenant. He is a building contractor and he said in his evidence that a chettiar owned No. 50 and the adjoining shophouse, that the chettiar engaged him to renovate and repair both buildings for $16,750, and that he did so. He said that the shophouses were completely repaired in three or four months.

He mentioned the condition of the buildings when he started work. He said that this row of shophouses including No. 50 was looted before the Japanese entered Muar, that the looters set fire to some of the buildings, that after the fire the first floor made of wooden planks had gone, that the front wall about 23 feet high was the strongest part of the building but it had collapsed completely, that the top portion of the rear wall had collapsed, but that the side walls were standing and charred.

Coming to the work he did, he said that he carried out the repairs to No. 50 in accordance with plan No. 69/47, that he had nothing to do with the foundations, that he was asked to put a roof over the shop, that he restored the first floor using timber planks, that he restored the wooden staircase, that he did not completely demolish all the walls of the shop, that he restored only those parts of the wall that he felt were not strong enough.

On this evidence the learned trial judge held that the shophouse was a building completed after 31st January, 1948, and therefore not subject to the Act.

In his reserved judgment he said —

"It is common ground that the original shophouse... was built some time before the last war. According to the evidence produced by the defence, that shophouse together with some other shophouses in the same row, was looted just before the Japanese troops entered Muar and the looters set fire to some of the buildings. A witness on behalf of the plaintiff [landlord] has testified that when he first moved into premises No. 44, Jalan Abdullah, Muar, in September, 1948, there was no shophouse at No. 50, Jalan Abdullah. It was an empty space and there were no walls left standing....

What was left of the old shophouse is best described by Mr. Khein Seng Chye, a building contractor, who was employed by the then owner of what was left of the shophouse to rebuild the present premises on the site of the old house and the adjoining shophouse which belonged to the same owner and was similarly burnt down. His evidence, which I have no reason to doubt, is that the side walls of the old shophouse were merely charred and not otherwise affected. The front wall, being the strongest part of the building, had collapsed and was no longer there, but only the top portion of the rear wall had crumbled and fallen to the ground. For the rebuilding of the two shophouses he charged the owner a sum of $16,750.

It would seem clear that in building the shophouse in question almost the whole of the old foundation of the former building, its side walls and rear wall up to a certain height were retained, but the rest of the building was entirely new."

Mr. Chelliah before us accepted the learned judge's finding, but contended that the wrong inference had been drawn and that on the contrary on the learned judge's own finding he should have inferred that the building was a building completed after 31st January, 1948, and therefore not subject to the Act.

Finally as regards the facts it should also be stated that the defendant firm first became tenant of the shop only on 16th October, 1963; that on 28th June, 1968, the plaintiff-landlord wrote to the tenant saying that she had bought the shophouse and asking that the tenant move out, as she wanted the place for herself; that on 6th July, 1968, she wrote again saying that if the tenant could not move out within a short time the tenant was to pay from 1st July, 1968, $480 rent per month (increased from $170). The plaintiff alleged and the defendant admitted that the plaintiff served on the defendant on 17th July, 1968, a notice to quit dated the same day.

I shall now discuss the law that is applicable.

It would appear from the law reports that this question has come up before the courts in five cases — once in Hongkong, twice in Singapore and twice here.

I shall consider these cases in chronological order.

First, the Hongkong case, *Kai Nam* v. *Ma Kam Chan*[5] which went up to the Privy Council.

The facts there were as follows. Before the Pacific War a site was occupied by a 4-storey building intended for residential purposes. During the war, in common with adjoining premises they suffered damage amounting to almost complete demolition. After the passing of the Landlord and Tenant Ordinance, the then owner obtained permission from the Public Works Department to erect temporary one-storey premises for use as shops. When building operations commenced, debris was piled on the site and only after it was cleared away was the exact position of the existing foundations disclosed. In the new construction, almost the whole of the old foundation was retained, and also the lower part of the old walls to an average height of three bricks above ground level. The old drains were used, the old concrete flooring was largely retained and also most of the old lavatory. The new walls were not as thick as the old, being of the thickness of one brick only. The plan of the floor was the same as the old ground floor though there was a slight increase of internal area owing to the thinner walls.

An occupation permit in respect of the new construction was issued on 7th October, 1947, under section 137 of the Buildings Ordinance.

Parts of the new construction were let separately to different tenants. On 19th October, 1953, the landlord gave notice to each of the tenants terminating his tenancy. The tenants refused to vacate. The landlord sued claiming possession and mesne profits. Each of the tenants contended that the premises occupied by him was "an entirely new building in respect of which the written permit of the building authority to occupy the same shall have been granted under the provisions of section 137 of the Buildings Ordinance after 16th day of August, 1945" within the meaning of section 3(1) of the Landlord and Tenant Ordinance and that therefore each of them was protected by that Ordinance.

The district judge held that since the existing structures included almost the whole of the foundations and concrete floors and an average of three bricks above ground level, each of the premises was an entirely new building.

On appeal it was held first by the Hongkong Supreme Court and subsequently by the Privy Council that each of the premises was an entirely new building. At page 368 Lord Cohen gave the Privy Council's reason in the following words —

"In their Lordships' opinion the District Judge laid too much emphasis on the word 'entirely' and paid insufficient attention to the words 'new building' and to the distinction between a building and the materials of which it is composed. They agree with Gould, Ag. C. J., that 'where the damage has been so extensive that repair is impossible, where there is nothing left which could possibly be called a building, then surely the existence of that building as such is terminated' and that 'a building replacing it would be an entirely new building even though it was built on the same foundations and had the same floor' as the old one.
...."

I shall now deal with the two cases from Singapore.

Eastern Realty Co. Ltd. v. *Chan Hua Seng*[6] was a decision of Wee Chong Jin C.J. in the High Court on appeal from the Civil District Court.

The landlords (appellants) on 1st October, 1958, granted their tenant (respondent) a month-to-month tenancy of controlled premises, comprising a single storey shed made of plank walls and timber pillars with a corrugated iron roof measuring 27 feet by 29 feet, and a small open shed with no walls, the zinc roof of which was supported by four wooden pillars, at a monthly rent of $20.

In October 1964 the landlords discovered that without their knowledge four new buildings had been built on the land, two of which appeared to be in place of the former buildings on it. The landlords sued their tenant for recovery of possession.

At the trial the tenant admitted having built two new buildings, but claimed that the other two were not new buildings but were the original two buildings one of which he had substantially repaired and not rebuilt and the other which had merely been extended in size.

The question was whether each of the latter two buildings was "a new building built or completed after 7th September, 1947" within the meaning of section 2 of the Singapore Control of Rent Ordinance, Cap. 242. If it was not, the tenant would be protected by the Ordinance, but if it was, then he would not be so protected.

The learned Chief Justice applied the test laid down by the Privy Council in the Hongkong case *Kai Nam*.[5]

At page 197 he said:

"In my opinion the only assistance, in relation to the question posed by this appeal, that can be derived from the Hong Kong case is that even though a building was erected on the same foundations and had the same floor as a former building it can nevertheless be 'an entirely new building' and *a fortiori* a 'new building' in an enactment relating to controlled tenancies. It also perhaps affords authority to support a contention that the word 'new' in our section 2 definition of 'premises' is used in relation to the building and not to the materials of which it is composed.

The question whether a building because of such substantial structural and/or other alterations becomes a 'new building' is in my opinion always a question of degree depending on the facts of each particular case. No test of universal application can in my view be laid down.

With regard to the present two-storeyed building the nature and extent of the structural alterations and other work carried out to the former one-storeyed building is beyond dispute. I have already set them out and in my judgment they clearly went far beyond repairs as found by the trial judge. I would hold that there has been such a fundamental change to the old building so that it can no longer be said to exist and that a new building has replaced it.

With regard to the other building the answer is in my opinion the same. The old building on the undisputed facts was an open shed 19 feet long by 9 feet wide with no walls the zinc roof of which was supported by four wooden pillars. It has now become a single storeyed building, 44 feet long by 11 feet 8 inches wide, with horizontal timber walls, a corrugated iron roof and a new cement floor. The trial judge nevertheless found that 'only repairs had been done' to this shed and had been carried out using partly old and partly new materials. In my opinion it would be a misuse of language to describe the work necessary to change an open shed, 19' x 9', to a timber walled structure, 44' x 11⅔', as repairs."

The second Singapore case is *Success Enterprises Ltd.* v. *Eng Ah Boon*,[7] a decision of Winslow J.

There were three structures on the land occupied by the defendant-tenant when he went into occupation prior to 1947. There now remained only two structures (known as No. 44 Aroozoo Avenue, Singapore), the third having been demolished in 1961. In the action the sole question was whether the remaining structures were new buildings built or completed after 7th September, 1947. If they were, the tenure of the tenant was protected by the Singapore Control of Rent Ordinance, Cap. 242. If they were not, then his tenure would not be protected.

The evidence was that the original main hut measuring 13 feet by 44 feet 6 inches was a dilapidated old plank and attap hut which was demolished in 1961 and that a fresh structure 25 feet by 36 feet was erected in its place which incorporated new brick walls with some plank and reinforced concrete netting. It was also in evidence that the shed at the back which was 16 feet by 19 feet had been altered to 21 feet 8 inches by 16 feet 3½ inches. The cost of all these operations was $3,000.

The learned judge held that (page 79) "to all intents and purposes the two old huts now comprise one new building. The two taken together bear no resemblance to their ancestors and it is quite a different property now" and that therefore the tenant's tenure was not protected by the Ordinance.

The learned judge applied the test given by Black J. in *Shanon* v. *McMahon*,[8] who said "The new work must have been not merely substantial, but so substantial as to have transformed the house, looked as a whole, into 'a new house in fact'. I think these words must connote not merely accessorial additions or alterations of merely localised effect but something fundamental, transforming the general structural character of the house as an entire entity."

I now turn to decisions in this country. The first brought to our attention is *Pritam Kaur* v. *Rajaratnam and Another*,[9] a decision of Raja Azlan Shah J. in which he followed the test laid down by Winslow J. in *Success Enterprises Ltd.*[7] The premises in question was house No. 22, Jalan Maaroff. It appeared that the house was completed before 31st January, 1948, but it was repaired and extended with the landlord's consent in 1961. The landlord claimed vacant possession against the tenants. The issue was, was this building a building completed after 31st January, 1948, within the meaning of section 4(2)(a) of the Control of Rent Act, 1966?

The alterations effected were recementing the floor, converting the kitchen into a hall, repairing the roof and replacing the plank walls. In all, the house was extended one and a half times.

Before answering the question whether these alterations were substantial enough to enable the house to be deemed new premises, as contended on behalf of the landlord, Raja Azlan Shah said at page 110 that the phrase "buildings completed after 31st day of January, 1948" envisaged either of two situations: —

(1) a building on which construction work was started before 31st January, 1948, but which is still uncompleted till a date after 31st January, 1948;

(2) a building completed before 31st January, 1948, but which has since that date been so fundamentally changed that it can no longer be said to exist and another building has replaced it.

His Lordship then ruled that the alterations had not made the house a building completed after 31st January, 1948, in the following words: —

"I do not consider that the repairs and extension work have been so substantial as to have transformed the general structure of the house so that it can be said that the present premises at No. 22, Jalan Maaroff is a new and different house in fact from the old one before the alterations were effected, the new house having shed all the attributes of the old. (See *Success Enterprises Ltd.* v. *Eng Ah Boon*[7]). Therefore, since the premises cannot fall within either of the two categories envisaged by the phrase 'buildings completed after 31st January, 1948', they are subject to the provisions of the 1966 Rent Act."

The second local case cited was *Tioh Kooi Lan* v. *Ismailjee*.[10] That was the first time that this question ever came up before the Federal Court.

The Federal Court was invited to lay down the general principle for determining the question whether a building is or is not a building completed after the prescribed date.

This court as a whole then shied away from laying down a definite general principle.

The facts there were as follows. The building concerned, No. 28, Station Road, Slim River, was a single-storey shophouse, one in a row of other shophouses, with the front portion used for serving customers and the rear occupied by the tenant as living quarters. The shophouse was originally completed before the prescribed date, 31st January, 1948. The tenant had been a tenant from about the year 1920; he was carrying on the business of a cloth merchant. The plaintiff-landlord bought the shophouse in 1960. In February 1967 the business portion (that is, the front) of the shop was destroyed by fire which left the rear portion intact. The tenant remained in possession living at the back. The landlord repaired the damaged portion by replacing the roof, plastering the party walls and replacing the front wooden shutters with a collapsible steel gate.

The landlord sought a declaration that the shophouse had ceased to be controlled premises. She argued that because of substantial alterations the shophouse was now a building completed after 31st January, 1948, within the meaning of section 4(2)(a) of the Control of Rent Act, 1966, and that therefore the shophouse was no longer controlled premises. Raja Azlan Shah J. dismissed the suit, holding that the landlord had not discharged the onus of showing that "there have been radical structural alterations so as to bring it within the meaning of new premises".

Following Winslow J. in *Success Enterprises Ltd.*[7] he said:

"Whether repairs to a particular building so as to transform it into a new premises is a question of degree depending on the facts. There must be some structural change more radical than mere improvements such as by way of repairs. That is the test to determine whether a new premises has come into being. The accessorial additions or

alterations of merely localised effect are not enough. There must be something fundamental transforming the general structural character of the house as an entire entity. That was said in *Shanon* v. *MacMahon*[8] which was referred to by Winslow J. in *Success Enterprises Ltd.* v. *Eng Ah Boon*.[7] I have said to the same effect in *Pritam Kaur* v. *Rajaratnam*."[9]

When this matter came up before this court, we unanimously upheld the learned trial judge's decision, but each of the judges concerned gave different reasons.

My Lord President, after saying at page 65 that he would be content to dismiss this appeal purely on the ground that on the facts of the case the landlord had failed to prove that the shophouse was completed after 31st January, 1948, added that he had some doubt whether in view of section 9(1)(b) and section 18 of the Control of Rent Act, 1966, the test applied by the learned judge was a correct one.

For my part I said —

"While agreeing with the learned trial judge's conclusion, I would say with respect that he relies too much on the test of the newness of the shophouse. Our statute no longer uses the word 'new' and for my part I would prefer merely to ask the question: is this shophouse a building completed after 31st January, 1948? On the facts there is no doubt that it is not; it was completed before that date, and the nature and extent of the repairs effected have made no difference to the date of its original completion and have not extinguished the identity of the shophouse or of its front portion as rent-controlled premises."

My brother Ali said at page 67 —

"In my respectful opinion the view as expressed by Raja Azlan Shah in *Pritam Kaur's* case[9] and extended to the instant case cannot on the facts be sustained. Whether it can be, if the facts had been the same as in *Eastern Realty Co. Ltd's* case[6] or in the case of *Success Enterprises Ltd.* v. *Eng Ah Boon*[7] is, I think, a question which would be considered when it arises. Therefore although I agree with the conclusion in this case I do not agree with the reasons for the conclusion."

From the above cases it will be observed that the language of the statutes applicable varies from country to country.

According to our 1966 Act, for buildings to fall outside the scope of the Act they must be —

"buildings completed after the 31st day of January, 1948".

Under our previous law, the Control of Rent Ordinance, 1956, they must be —

"*new* buildings completed after the 31st day of January, 1948" (proviso (a) to definition of premises in section 2(1)).

In Singapore, they must be —

"*new* buildings *built* or completed after the 7th day of September, 1947" (definition of premises in section 2 of Control of Rent Ordinance (Cap. 242)).

In Hongkong, such a building must be —

"an *entirely new* building in respect of which the written permit of the building authority to occupy the same shall have been granted under the provisions of section 137 of the Buildings Ordinance after the 16th day of August, 1945".

It is to be observed that our 1966 Act, unlike the other three statutes, does not use the word "new". Nevertheless it seems to me that the test for determining whether or not a building is excepted from the operation of any of the statutes is the same. And it also seems to me that the different language used by Singapore judges and by our judges here leads to the same test in regard to buildings completed before the relevant date but thereafter damaged and repaired or, as the case may be, rebuilt. That test, as stated by the Acting Chief Justice of Hongkong and approved by the Privy Council, is this: where the damage has been so extensive, so that there is nothing left which could possibly be called a building, then the existence of that building as a building is terminated and a building replacing it would be an entirely new building though it was built on the same foundations and had the same floor.

Applying that test to the facts in this case, I am of the opinion that shophouse No. 50, Jalan Abdullah, Muar, at the material date is a building completed after 31st January, 1948, and therefore not subject to the Act.

As a result of looting and burning during the Japanese invasion, all that was left of the building were only two side walls, and part of the back wall, and the place was open to the sky with grass growing on the ground and was not fit for human habitation. Nobody walking down Jalan Abdullah in 1949 could possibly say that there was a building there.

What was the work done on the place which the contractor described as repairs and renovations? He patched up the side walls, he built up the rear wall, he put up a new front wall, he built a new staircase to the first floor, he put in a new floor on the first floor level, and he put in a new roof. He must have done other work also to make it fit for human habitation, so that the then owner could obtain a certificate of fitness from the Town Council which he did a week before 1st June, 1950.

In view of the extensive nature of the work done by the contractor, in my judgment an altogether different building — a new building — has arisen from the ashes of the old, even though (in the words of the Hongkong Acting Chief Justice approved by the Privy Council) this building "was built on the same foundations and had the same [ground] floor". The words of Black J. quoted by Winslow J. in *Success Enterprises*[7] and echoed by Raja Azlan Shah J. in *Pritam Kaur*,[9] it seems to me, are appropriate only to repairs and renovations, and not to rebuilding as is the case here; but nevertheless even applying those words it can be said here that the new work done on shophouse No. 50 was not merely substantial, but it was so substantial as to have transformed the house, looked at a whole, into a new house in fact; it did not merely consist of accessorial additions or alterations of merely localised effect but on the contrary it consisted of something fundamental, transforming the general structural character of the house as an entire entity.

I do not think that anything I say here is inconsistent with what my Lord President or what I myself said in *Tioh Kooi Lan*.[10]

A final ground of appeal relates to the validity of the notice to quit, but Mr. Chelliah before us was half-hearted about it, and I think rightly so, because there is no merit in it.

I would therefore dismiss this appeal with costs.

Azmi L.P. and **Ong Hock Sim F.J.** concurred.

Appeal dismissed.

Solicitors: *R. R. Chelliah Bros.; Yeow & Chin.*